

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Implementation of Section 621(a)(1) of)
the Cable Communications Policy Act of 1984) MB Docket No. 05-
311
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

COMMENTS OF NASH COUNTY

These Comments are filed by Whitakers in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, Whitakers believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

Cable Franchising in Our Community

Community Information

Whitakers is a Town with a population of 783. Our community has negotiated cable franchises since the 1960's.

Our Current Franchise

The term of any franchise granted pursuant to this Chapter shall be stated in the franchise agreement and shall not exceed 20 years. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are not currently negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to the Town in the amount of 5% of the cable operator's gross revenues. The revenues for

franchise fee purposes are calculated based on the gross revenues (e.g., program and installation fees, advertising revenues, launch fees, late fees, etc.) of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have 6 channels (or capacity) devoted to public access; 2 channels devoted to educational access; and 2 channels devoted to government access.

Our franchise contains the following requirements regarding emergency alerts:

Emergency Alert System Participation

The Grantee shall install and maintain an emergency alert system [EAS] pursuant to FCC's rules and the North Carolina Emergency Alert System Plan. The Grantor's Public Safety Communication Center shall be provided with access to the system so that it can communicate emergency messages and alerts to residents consistent with the North Carolina Emergency Alert System Plan. The emergency alert system shall be activated by the Grantee pursuant to Section VI (B) of the North Carolina Emergency Alert System Plan.

These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise.

Customer Service Standards

1. Subscriber Privacy

In accordance with 47 U.S.C. § 551, the Grantee shall, no less than annually, provide a privacy notice in the form of a separate written statement to subscribers as required by the provisions of the Act. The grantee shall at all times protect the privacy of subscribers, as provided in this chapter and other applicable federal, state and local laws. (Ord. Of 3-1-93, § VIII(8.5))

2. Employee Identification

Each employee of the grantee when entering private property or working on public ways shall be required to wear an employee identification card issued by the grantee bearing the name and a photograph of said employee.

3. Customer Service/Call Center Hours and Telephone Availability

- A. For purposes of this article, the term “normal business hours” shall mean those hours during which most similar businesses in the community are open to serve customers. In all cases, “normal business hours” must include some evening hours at least one night per week and/or some weekend hours.*
- B. A grantee shall establish and maintain such business offices and customer service/call centers and provide personnel, telephone service and other equipment, as needed, to ensure timely, efficient and effective service to customers. Such personnel shall include one person designated by the grantee to act as a liaison between the grantee and the County regarding customer service issues. All customer service/call centers of the grantee shall have a locally listed, toll-free or collect telephone number with an access line available to subscribers 24 hours a day, seven (7) days a week. Trained company representatives will be available to respond to customer telephone inquiries 24 hours a day, seven (7) days a week.*
- C. The grantee’s customer service/call center and bill payment locations will be open at least during normal business hours and will be located within the County. The grantee’s business offices shall be open, at a minimum, from 9 a.m. to 5 p.m. for six (6) days a week. Upon a showing of changed circumstances or for other good cause shown, the County may permit a reduction in the grantee’s business office hours, and such permission shall not be unreasonably withheld. Additionally, at various times during the day, the grantee shall cablecast the address, telephone number and office hours of its business offices, customer service/call centers and bill payment locations on a local origination channel received by all subscribers.*

4. Telephone answer time.

- A. Normal operating conditions. For purposes of this section, the term “normal operating conditions” shall mean those service conditions that are within the control of the grantee. Those conditions that are not within the control of the grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions*

that are ordinarily within the control of the grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

- B. Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.*
- C. The grantee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless the Cable Administrator determines that a sufficient record of complaints indicates a clear failure to comply.*
- D. Under normal operating conditions, the customer will receive a busy signal less than three percent (3%) of the time.*

4. Installations, Outage and Service Calls

Under normal operating conditions, each of the following standards shall be met no less than ninety-five percent (95%) of the time measured on an annual basis.

- A. Standard installation shall be performed within seven (7) business days after an order has been placed. "Standard" installations are up to one hundred twenty-five (125) feet from the existing distribution system.*
- B. The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a three-hour time block between the hours of 9 a.m. and 5 p.m. six (6) days a week. The grantee may schedule service calls and other installation activities outside of the above days and hours for the express convenience of the customer.*
- C. The grantee may not cancel an appointment with a customer after the close of the business day prior to the scheduled appointment.*
- D. If a grantee representative is running late for an appointment with a customer and will not be able to keep the scheduled appointment, the*

customer will be contacted. The appointment will be rescheduled, as necessary, for the specific day and time requested by the customer. The customer may request that the appointment take place anytime between the hours of 8 a.m. and 8 p.m. on Monday through Saturday.

5. Communication between grantees and cable subscribers

A. Refunds. Refund checks will be issued promptly, but no later than either—

(1) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(2) The return of the equipment supplied by the grantee if Cable Service is terminated.

B. Credits. Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

6. Subscriber Complaint Resolution.

The grantee shall promptly respond to and resolve all subscriber complaints. The grantee shall maintain records of such complaints setting forth the date and nature of the complaint and any action taken in response thereto. Such records shall be available to the County during the grantee's normal business hours and retained in the grantee's files for not less than three (3) years. A statistical summary of such records shall be prepared by the grantee and submitted to the County on a quarterly basis for the life of the franchise. Complaints will be broken out by type of service that is the subject of the complaint.

Service Area

The franchise area hereby granted by the County shall be the geographic area located within the County limits where there is an existing cable communications system served by the franchisee and other future development areas that can be reached by the existing system at an average of eighteen (18) homes per plant mile. The franchisee shall serve the franchise area efficiently and to extend its services to all areas of the County (exclusive of incorporated areas).

Extension Outside the Initial Franchise Area

- A. *The franchised cable operator shall extend Cable Service beyond its initial or in the case of renewal, present service area to any household where the number of occupied homes, and homes for which certificates of occupancy have been issued equals at least eighteen (18) homes per street/road plant mile with the measurement starting from the closest Cable System node.*
- B. *All extensions beyond grantee's initial service area shall be completed within three (3) years from the effective date any request by the County. The Board of Commissioners may approve additional time subject to a written request by the cable operator that delineates an economic case for additional time.*
- C. *Periodically the County may direct the cable operator to extend its Cable System to serve areas, such as new housing developments, where the density standard is met. Such extensions shall be completed within twelve (12) months from the date of notification. The County may approve additional time subject to a written request by any Grantee that delineates the case for additional time to the Board of Commissioners.*
- D. *If the number of households per plant mile is less than eighteen (18), resident(s) may obtain service by paying a share of the incremental cost of the extension as follows:*
 - (1) *The Grantee shall pay a share of costs calculated as the fraction derived from the existing density as calculated above divided by eighteen (18) homes per plant mile; requesting Subscriber(s)' share shall equal the remainder. For example, if the line extension density is nine (9) homes per plant mile, the Grantee shall pay fifty percent (50%) of the extension cost and the requesting Subscriber(s) shall pay the remaining fifty percent (50%).*
 - (2) *Upon receipt of a request for a Cable Service extension from the Grantor, the Grantee shall, within thirty (30) days, respond in writing with its calculation of the density. If the density is less than eighteen (18) homes per mile, the Grantee shall also provide a firm price good for six (6) months reflecting the proportional share which requesting resident(s) must pay on a cost sharing basis to obtain Cable*

Service. Within ninety (90) days from payment of the cost share by prospective Subscriber(s) and receipt of all necessary utility permits or other Right-of-Way permits, the Grantee shall complete the extension of Cable Service.

(3) As the household density increases in an area where service is extended on a cost sharing basis, the Grantee shall, upon request, annually refund a proportionate share of the Subscriber(s)' contributions commensurate with the increase in density. Such refunds shall not be due to requesting parties after five (5) years from the date of completion of a Cable Service extension.

Our franchise contains the following letter of credit requirements:

Letter of Credit

- A. Within thirty (30) calendar days after the Commission has taken final action to approve the granting a franchise, the grantee shall file with the County Clerk a written acceptance of the conditions required for the franchise, acknowledged before a notary public. Such acceptance shall acknowledge that the grantee agrees to be bound by and to comply with the provisions of this chapter and the franchise and shall be in a form approved by the town attorney.*
- B. Concurrently with the filing of the written acceptance, the grantee shall file with the County Clerk the letter of credit and insurance policies required.*

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a ROW permit before it may access the public rights of way.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement

Remedies - Liquidated Damages – Minimum Compensation to customer for Noncompliance

- A. Responsiveness – Guaranteed Seven (7) Day Residential Installation and Service. Grantee shall provide Cable Service to its customers within seven (7) business days following order placement. Free*

installation, or, if the installation fee has been waived for promotional reasons, then a one (1) month service credit shall be awarded to the customer.

B. Grantee shall provide customers seeking custom installations with a cost estimate and a projected completion date. Free installation, or, if the installation fee has been waived for promotional reasons, then a one (1) month service credit shall be awarded to the customer.

C. All underground cable drops shall be buried no less than twelve (12) inches deep and work shall be completed in no more than two (2) calendar weeks from the installation date. For failure to bury the drop, a \$100.00 credit shall be awarded to the customer.

D. For failure to comply with the following, a \$25.00 credit shall be awarded to the customer:

(1) Customers who have ordered Cable Service may choose any available two (2) hour time block between 8 a.m. and 6 p.m. Monday-Saturday.

(2) If the grantee cannot make an appointment for any reason, the grantee shall contact the customer before the end of the scheduled appointment and reschedule at the convenience of the Customer.

(3) Grantees will give notice to property owners before entering premises, specifying the work to be done. In the event of an emergency, the grantee shall attempt to contact the property owner a legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made.

(4) Grantee will deliver and pick up converters at the home of customers with disabilities. In the case of a malfunctioning converter, the technician shall provide another converter, install and test it to ensure it is functioning properly.

(5) Grantee will provide TDD/TYY service through trained operators who can provide any assistance regularly from a CSR at no charge.

(6) Grantee will install, at no charge, any closed captioning device purchased by a hearing-impaired Customer for use on the grantee's Cable System.

- E. The grantee may not cancel an appointment with a customer after 5:00 p.m. on the day before the scheduled appointment. For failure to comply, a \$25.00 credit or the guarantee offered by the grantee shall be awarded to the customer.*
- F. For failure to comply with the following, a \$10.00 credit shall be awarded to the customer:*
- (1) If the grantee technician arrives within the agreed-upon time, and the customer is absent, the technician shall leave written notification of arrival and return time, and the grantee shall contact the customer within forty-eight (48) hours to reschedule. For failure to contact the customer within forty-eight (48) hours, a \$10.00 credit shall be awarded the customer.*
 - (2) The grantee shall be able to provide credit, waive fees, schedule appointment and change billing cycles to accommodate customers. Difficulties that cannot be resolved by the grantee's customer service representatives shall be referred to a supervisor who shall contact the customer within twenty-four (24) hours.*
 - (3) In the case of difficulties that cannot be resolved, the supervisor shall contact the customer within four (4) hours and resolve the problem within forty-eight (48) hours or within such other time frame as is acceptable to the customer and grantee.*
 - (4) Customers shall receive a clear and concise bill monthly. The Grantee shall respond to a customer's billing inquiry made by telephone or e-mail within forty-eight (48) hours, and to a written billing inquiry within two (2) weeks of receipt of the inquiry.*
 - (5) All grantees shall allow thirty (30) days from the date a subscriber bill is mailed before imposing an administrative fee not to exceed \$1.50 per bill.*
 - (6) If a customer requests disconnection of any or all services, billing for affected services shall end on the same day, or on the future date for which the disconnect is ordered. All Grantees shall issue a credit or refund within fifteen (15) business days after the close of the Customer's billing cycle following the return of the equipment and request for disconnection. For failure to comply, a \$10.00 credit or refund if the Customer's account has closed shall be awarded to the customer.*

- (7) *Deposits shall accrue interest at a fair market rate. Within ten (10) days after termination of service for any reason, the Grantee shall repay any deposit with a statement showing accrued interest to the Customer less any sums owed to the Grantee. For failure to comply, a \$10.00 credit or refund if the Customer's account has closed shall be awarded to the customer.*
- (8) *Upon installation, or at a customer's request, grantee will provide the following requested information:*
- a. Products and services offered;*
 - b. Complete range of service options and prices;*
 - c. Customer service standards;;*
 - d. Instruction on use of cable TV, interactive TV, Internet service, remote and on standard VCR/DVD installations'*
 - e. Billing, collection and disconnect policies;*
 - f. Customer privacy requirements;*
 - g. Complaint procedure, containing the designated County agency to whom the Complaints should be addressed;*
 - h. Use and availability of A/B switch*
 - i. Use and availability of parental control/lock-out device;*
 - j. Special services for Customers with visual, hearing or mobility disabilities;*
 - k. Days, times of operation, and locations of the service center; and*
 - l. Failure to provide the customer with this foregoing, information, a \$10.00 credit shall be awarded the customer.*
- (9) *Grantees shall provide customers and the County with written notification of any change in rates, programming, or channels at least thirty (30) days before the date of the change.*
- (10) *All officers, agents, customer service representatives (CSR) and employees of the grantee, its contractors and subcontractors in personal contact with the Customer shall have a visible identification card with their name and photograph and shall orally identify themselves upon first contact with the Customer.*
- (11) *All CSRs shall identify themselves orally to callers immediately following the greeting during each telephone contact with the public.*
- (12) *Each CSR, technician, or employee of the grantee in each contact with a customer shall state the estimated cost of the service, repair, or installation orally prior to delivery of the service or before any*

work is performed, and shall provide the customer with an oral statement of the total charges before terminating the telephone call or before leaving the location at which the work was performed.

- H. Grantee shall make repairs promptly, and interrupt service only for good cause, during periods of minimum use (midnight to 6 am), except when unavoidable. One (1) day's free service for each day there is a service interruption shall be automatically awarded each customer in the affected area.*
- I. Grantee shall provide clear television reception that meets or exceeds FCC technical standards. One (1) day's service for each day picture quality fails to meet FCC standards shall be automatically awarded each customer in the affected area.*
- J. All Grantees shall satisfy all specifications advertised for Internet service. One (1) day's service for each day in which any advertised criteria is not met shall be automatically awarded each customer in the affected area.*
- K. If a Customer experiences poor video or audio reception due to Grantee equipment, the Grantee shall repair the problem no later than the next day, unless otherwise agreed to with the Customer. Regardless, one (1) day's service for each day the problem remains uncorrected shall be automatically awarded each customer in the affected area.*
- L. Grantees shall replace any trees or shrubs damaged during any installation or repair. For failure to comply, a \$25.00 credit plus reimbursement for the cost for repairs and landscaping shall be awarded to the property owner.*
- M. Grantees shall restore any damaged property to the same condition it was before damage occurred. For failure to comply, a \$25.00 credit plus reimbursement for the cost to repair damaged property shall be awarded to the property owner.*
- N. Grantee personnel shall remove debris caused by the grantee agent's activities at a work site and properly dispose of the materials. For failure to comply, a \$15.00 credit plus reimbursement for the cost for debris disposal shall be awarded the property owner.*
- O. Customer privacy. For any violation of privacy per federal law or County Code the grantee shall credit all affected customer accounts \$150.00 per incident.*

- P. Safety. When the Grantee receives notice that an unsafe condition exists with respect to its equipment, Grantee shall investigate such condition immediately, and shall take such measures as are necessary to remove or eliminate any unsafe condition. For failure to comply, the grantee shall credit the customer's account \$40.00 a day for each twenty-four (24) hour period, all or in part for failure to correct the customer's safety concerns.*
- Q. Satisfaction guaranteed. Grantees will guarantee customer satisfaction for every customer who requests new or upgraded Cable Service or Other Service of receiving the service and receive a pro rata credit in an amount equal to the pro rata charge for the remaining days of service being disconnected if the customer is dissatisfied with the service, except where a free promotion has been offered, there shall be no charge of any kind for the service or for disconnection of the service. The customer will have the opportunity to cancel upgraded Cable Service(s) or Other Service(s) within thirty (30) days.*

The Franchising Process

Any person desiring an initial franchise for a cable television system shall file an application with the town in accordance with the provisions of this section. An application for an initial franchise for a cable television system shall contain, where applicable:

- 1) A statement as to the proposed franchise and service area.*
- 2) A resume of the prior history of the applicant, including the legal, technical and financial expertise of the applicant in the cable television field.*
- 3) A list of the partners, general and limited, of the applicant, if a partnership, or the percentage of stock owned or controlled by each shareholder, if a corporation.*
- 4) A list of the officers, directors and managing employees of the applicant, together with a description of the background of each such person.*
- 5) The names and addresses of any parent or subsidiary of the applicant or any other business entity owning or controlling the applicant in whole or in part, or owned or controlled in whole or in part by the applicant.*
- 6) A current financial statement of the applicant verified by a CPA audit or otherwise certified to be complete and correct to the reasonable satisfaction of the town.*

- 7) *A proposed construction and service schedule.*
- 8) *Any additional information that the town deems reasonable necessary to determine whether the applicant has to construct, operate, and maintain a cable television system and provide cable service in accordance with the provisions of the chapter.*

A nonrefundable application fee in the amount of \$3,000.00 shall accompany the application. Such application fee shall not be deemed to be "Franchise Fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. §542), and such payments shall not be deemed to be "payments in kind" or any involuntary payments chargeable against the compensation to be paid to the County by a grantee pursuant to provisions of a franchise.

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Franchise Modification

The Town recognized the need to accommodate changes in the laws and regulations related to the provision of cable television services by the cable operator. To accommodate such changes, the Town inserted provisions in the franchise agreement to permit either party the ability to approach the other to secure changes to the agreement that reflect changed circumstances. This language appears below:

It recognizes the right of the County to make reasonable amendments to the Chapter or franchise during the term of the franchise after good faith negotiation with the grantee, provided that no such change shall conflict with the grantee's rights under this Chapter or the franchise (except as authorized by federal or state laws or compromise the grantee's ability to perform satisfactorily its obligations or rights under this Chapter or the franchise. It further recognizes and agrees that the County shall in no way be bound to renew the franchise at the end of any franchise term, except as provided in Section 10-42.

Supervision of franchise

- A. *The County shall have the following regulatory responsibility:*

1. *Administration and enforcement of the provisions of this Chapter and any franchise granted under this Chapter.*
2. *Award renewal, an extension or terminate a franchise pursuant to the provisions of this Chapter, the franchise and other applicable law.*
3. *Consent prior to sale or transfer of any franchise granted under this Chapter.*
4. *Performance evaluation.*
5. *Rate regulation, when applicable.*

B. The County also reserves the right to perform the following functions:

1. *Develop objective and coordinate activities related to the operation of government channels.*
2. *Coordinate plans for expansion, interconnection and growth of cable services.*
3. *Formulate and recommend long-range telecommunications policy for the County, and determine the County's view of the future cable-related needs and interests of the community.*
4. *Provide the administrative effort necessary for the conduct of performance evaluations, and any other activities required for the administration of the franchise.*
5. *Monitor the grantee's process for handling citizen complaints and periodically inspect and analyze the record related to such complaints.*
6. *Receive applications for rate increases if applicable and provide staff assistance in the analysis and recommendations thereto.*
7. *Monitor the grantee's adherence to operational standards, service requirements and line extension policies.*
8. *Ensure compliance with applicable laws and ordinances.*

9. *Arrange tests and analysis of equipment and performance, as needed to ensure compliance with this Chapter and the franchise.*
 10. *Ensure continuity in service.*
 11. *Receive for examination all data and reports required by this Chapter.*
- C. *Notwithstanding any other provisions of this Chapter to the contrary, the grantee shall at all times comply with all laws and regulations of the local, state or federal government or any agency thereof, or any court of competent jurisdiction upon final adjudication, substantially reduce in any way the power or authority of the County under this Chapter or the franchise, or if in compliance with any local, state or federal regulation the grantee finds conflict with the terms following knowledge thereof, the grantee shall notify the County of this point of conflict believed to exist between such law or regulation and the law or regulations of the County, this Chapter and the franchise. The County, as its option, may notify the grantee that it wishes to negotiate those provisions that are affected in any way by such modification in regulations or statutory authority. Thereafter, the grantee shall negotiate in good faith with the County in developing alternated provisions that shall fairly restore the County to the maximum level of authority and power permitted by law.*

Competitive Cable Systems

Our community has never been approached by a competitive provider to provide service, although it has at various times sought out competitive providers.

Conclusions

The local cable franchising process functions well in Whitakers. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are considered.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including

maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The Town of Whitakers therefore respectfully requests that the Commission not undertake any action to subvert local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

Town of Whitakers

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